

ORIGINAL

FX PARTE OR LATE FILED

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.

MICHAEL K. KELLOGG
PETER W. HUBER
MARK C. HANSEN
K. CHRIS TODD
MARK L. EVANS
AUSTIN C. SCHLICK

1301 K STREET, N.W.
SUITE 1000 WEST
WASHINGTON, D.C. 20005-3317

(202) 326-7900
FACSIMILE:
(202) 326-7999

STEVEN F. BENZ
NEIL M. GORSUCH
GEOFFREY M. KLINEBERG
REID M. FIGEL
HENK BRANDS
SEAN A. LEV
COURTNEY SIMMONS ELWOOD

November 2, 1999

RECEIVED

NOV - 2 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ex Parte Filing

Magalie Salas, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
12th Street Lobby, Room TW-A325
Washington, D.C. 20554

In re Matter of the Pay Telephone Reclassification and Compensation Provisions
of the Telecommunications Act of 1996, **CC Docket No. 96-128; File No. NSD-
L-99-34**

Dear Ms. Salas:

On Monday, November 1, Marie Breslin of Bell Atlantic, Rodger McDowall of SBC Communications, Michael Kellogg, and I met on behalf of the RBOC/GTE Payphone Coalition with Charles Keller, Kurt Schroeder, Martin Schwimmer, and Robin Smollens of the FCC. The topic of discussion was the Coalition's Petition for Clarification concerning the party responsible for payment of per-call compensation. The attached document reflects the substance of our presentation.

One original and one copy of this letter are being submitted to you in compliance with 47 C.F.R. § 1.1206(a)(2) to be included in the record of this proceeding. If you have any questions concerning this matter, please contact me at (202) 326-7921.

Sincerely,


Aaron M. Panner

Enclosure

No. of Copies rec'd 051
List ABCDE

**RBOC/GTE Payphone Coalition:
Reducing the Compensation Shortfall**

November 1, 1999

Compensation Shortfall and the Reseller Problem

- **Per-Call Compensation Shortfall for Coalition Members Stands at \$100 Million Annually**
- **Two Major Problems Create the Shortfall**
 - Many major carriers have paid far less than they owe.
 - Many smaller carriers have paid nothing at all.
- **Reseller Issue Is Most Important Remaining Enforcement Problem**
 - Many major carriers insist that underpayments are responsibility of resellers.
 - Efforts to identify resellers have faced major obstacles.
 - PSP has no way to identify which calls carried by resellers.
 - IXC's do not identify the calls they pay for.
 - IXC's do not identify the resellers responsible .
- **PSPs Are Left at the Mercy of IXC's and Resellers**

Root of the Problem: “Switch-Based Reseller” Loophole

- The Basic Rule: Facilities-Based Carriers Pay
 - “[E]very carrier to whom a completed call from a payphone is routed shall compensate the payphone service provider.” 47 C.F.R. § 64.1300(a).
 - “In the interests of administrative efficiency and lower costs, facilities-based carriers should pay the per-call compensation for the calls received by their reseller customers.” First Report and Order, 11 FCC Rcd at 20586, ¶ 86.
- In Limited Circumstances, A Reseller May Take Over Per-Call Payments for the Facilities-Based Carrier
 - Facilities-based carriers are not required to pay compensation when “switch-based resale customers have identified themselves as responsible for paying compensation.” Memorandum Opinion and Order, 13 FC Rcd at 10915-16, ¶ 38.
 - “If a carrier does not maintain its own switching capability, then . . . the underlying carrier remains obligated.” Order on Recon., 11 FCC Rcd at 21277, ¶ 92.
- Facilities-Based Carriers Have Taken This Narrow Exception And Run With It

The Bureau Should Immediately Clarify the Rule

- Comments Received in the Petition for Clarification Demonstrate Need for Bureau Guidance
- Clarification Must Be Consistent With Letter and Spirit of Prior Rulings
 - The Basic Rule: The Owner of the First Switch Is Required to Pay Compensation
 - Regulation provides that the carrier “to whom a completed call from a payphone is routed” must pay. 47 C.F.R. § 64.1300(a).
 - Most natural reading of this rule is that the IXC who owns the facilities to which the LEC delivers the payphone call is responsible.
 - First switch owner decides whether to order Flex ANI; reinforces presumption that first switch owner must track and pay.
 - For Obligation to Shift to Reseller, Three Conditions Must Be Satisfied
 - IXC must identify the reseller responsible for the particular call.
 - Reseller must have a switch within the network capable of tracking calls.
 - Platform providers — like debit card resellers — do not qualify because their “switches” are not within the network.
 - Reseller must affirmatively undertake obligation to pay compensation.

The Commission Should Adopt CIC Solution

- On a Going-Forward Basis, Commission Should Provide that CIC Assignee for Particular Call Must Pay Compensation
- The CIC Solution Has Several Advantages Over Current Rules:
 - No More Definitional Disputes
 - Distinctions among facilities-based carriers, switch-based resellers, and non-switch-based resellers do not correspond to routing and tracking of calls in the network.
 - No dispute over CIC assignee — for each call, there is a unique CIC.
 - CIC Associated with Each Call Is Available to PSP for Verification Purposes
 - CIC Solution Will Reduce Disputes and Improve Collection Efficiency
 - Top ten CIC assignees account for over 96 percent of calls; top twenty CIC assignees account for over 98 percent of calls.

IXCs' Objections to CIC Solution Are Baseless

- Main Objection Is CIC Assignee May Not Be Able To Identify Completed Calls
 - For 101XXXX Access Code Calls and Non-Resold Subscriber 800 Calls, CIC Assignee Can Always Identify Completed Calls
 - For Switch-Based Resellers, CIC Assignee Has Contractual Relationship with Reseller Who Can Identify Completed Calls
- The CIC Solution Is Already Working
 - AT&T Already Uses CICs to Track Per-Call Compensation
 - Reconciliation Disputes with AT&T Are Relatively Minimal